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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/446,395	12/22/1999	ULLA OLOFSSON	000515-175	2263

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EXAMINER

WEBB, JAMISUE A

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 10/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/446,395

Applicant(s)

OLOFSSON ET AL.

Examiner

Jamisue A. Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/16/02 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 6-10, and 12-19 are rejected under 35 USC 103(a) as being unpatentable over Langdon (5,368,910) in view of Gryskiewicz et al. (5,913,851).

4. With respect to Claims 1, 3, 4, 8, 12-17 and 19: Langdon discloses the use of an absorbent article, such as diapers, catamenials, sanitary napkins and incontinent articles (column 1, lines 14-17) with an absorbent body, backsheet and topsheet (column 2, lines 25-31), where the topsheet consists of a first material (Langdon's second layer) that can be either polyethylene or bicomponent material (column 2, lines 50-51). Langdon discloses the material being plasma/corona treated to make the surface more hydrophilic (column 8, lines 39-42).

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5. Langdon discloses the use of the material layer being made of capillary fibers that are made hydrophilic by applying a plasma/corona charge, however does not disclose the fibers having an oxygen/carbon ratio higher than 0.19. Gryskiewicz discloses the use of a liquid permeable layer that is a nonwoven web that is treated to be made hydrophilic and is made of bicomponent fibers, the core being polyester and the sheath (or outside) being polyethylene (column 9, lines 1-13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the capillary fibers of Langdon, be the bicomponent fibers of Gryskiewicz, in order to provide a topsheet that is soft and is sufficient enough to aid in liquid transfer to the absorbent structure. (See Gryskiewicz, columns 8 and 9). It is the examiner's position that the oxygen/carbon ratio is inherent in the material itself, and due to the fact that Langdon and Gryskiewicz disclose a nonwoven web made of fibers that are polyester and are completely coated with polyethylene, and is treated with a plasma/corona charge (as shown in the applicant's specification), then it is inherent that the material itself has an oxygen/carbon ratio that is greater than 0.19.

6. With respect to Claim 2: Langdon discloses the first material being a nonwoven material (column 6, line 58 to column 8, line 48).

7. With respect to Claim 6, 7 and 9: Langdon discloses the topsheet being made from a second fibrous nonwoven layer (column 5, line 33) and is polypropylene (column 6, line 18).

8. With respect to Claim 10: Langdon discloses the polypropylene layer being located on the top of the layer with the polyethylene fibers (column 2, lines 22-54).

9. With respect to Claim 11: Langdon and Gryskiewicz disclose the bicomponent fiber layer being closer to the core and the polypropylene layer being located on top of that, however fails to

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teach the other way around, where the polypropylene component layer is located closer to the core and the bicomponent layer being located on top of that. It would have been an obvious matter of design choice to have the polypropylene layer adjacent the core and the bicomponent layer on top of that, since the applicant has not disclosed that the placement of the two layer solves any stated problem or is for any particular purpose and it appears that the invention with the bicomponent layer closer to the core and the polypropylene layer on top of that would perform equally well. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the bicomponent layer closer to the core and the polypropylene layer on top, since it has been held that rearranging of parts of an invention involves only routine skill in the art. In re *Japikse*, 86 USPQ 70.

10. With respect to Claim 18: Metallocene is used as a catalyst in the polymerization of certain polyolefins, therefore metallocene-catalyzed refers to a process used to polymerize the polyethylene. The limitation of the polyethylene being a metallocene-catalyzed polyethylene is considered a Product-by-Process limitation and these limitations are not limited to the manipulations of steps, only the end structure implied by these steps (see MPEP 2113). It follows that if the product in the claim with the product-by-process limitation is the same as the product of the prior art, the claim is unpatentable even though the prior art product was made by a different process. Therefore the polyethylene being a metallocene catalyzed polyethylene is anticipated in the Langdon and Gryskiewicz references.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Langdon in view of Gryskiewicz as applied to claim 1 above, and further in view of Thomas et al. (4,351,784).

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12. Langdon discloses the fibrous material (claimed first layer) can be webs, ribbons, and films, and discloses it can be apertured (column 6, line 2), but fails to teach the use of a perforated plastic film. Thomas teaches the use of a corona treated perforated thermoplastic film (see abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the nonwoven webs of the fibrous material, be in the form of a perforated film, as disclosed by Thomas, in order to provide increased liquid flow rate of liquid through the material. (see Thomas, abstract).

Response to Arguments

13. Applicant's arguments filed 8/12/02 have been fully considered but they are not persuasive.

14. With respect to Applicant's arguments that in order to obtain the cover sheet as claimed that one of skill in the art would have to know which portions of Langdon and Gryskiewicz to combine, that there is no suggestion of the use of polyethylene over any other possible materials and there is no suggestion to use plasma or corona treatments over other surfactants:

Gryskiewicz discloses that a preferred material is the bicomponent fiber with the polyester core and polyethylene sheath, and sets this material apart from all other polyolefin material, therefore one of ordinary skill in the art would be drawn to using the bicomponent fibers of Gryskiewicz over any other materials (column 9, line 11). Langdon also discloses (column 8, lines 41-43) that plasma or corona treatments methods "have the advantage that there is no surfactant residue", therefore one of ordinary skill in the art would be motivated to use the corona or plasma treatments before using surfactants, therefore it is the examiner's position that one of

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ordinary skill in the art would have motivation to combine the two references, as disclosed above in the 103 rejection of the claims.

15. With respect to Applicant's claims that Gryskiewicz nor Langdon disclose an oxygen/carbon ratio of greater than 0.19: As mentioned above the combination of the Langdon and Gryskiewicz references gives a material that is made from the same claimed material, and treated using the same method as claimed, therefore it is the examiner's position that if the same material was treated by the same method as what is claimed, then it is inherent that the material has the claimed oxygen/carbon ratio.

16. With respect to Applicant's arguments that "the fact that a certain result or characteristic may occur or be present in the art is not sufficient to establish the inherence of that result or characteristic", and that the oxygen/carbon ratio of the claims would only potentially be present if one of ordinary skill in the art knew which materials to use and how to treat them: As mentioned above, one of skill in the art are motivated to use the preferred materials of Gryskiewicz, which is a fiber with the exposed surface being polyethylene (core being polyester) and to treat the material using the preferred method of Langdon, which is plasma/corona treatment, in order to make the surface more hydrophilic. The combination of the Langdon and Gryskiewicz provide the same claimed material and treated the same way to make the material hydrophilic, therefore the oxygen/carbon ratio would be an inherent property. The MPEP 2112.01 states that "products of identical chemical composition cannot have mutually exclusive properties" and a chemical composition and its properties are inseparable. MPEP 2112 states that the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. In re Best, 562 F.2d 1252, 195

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USPQ 430, 433 (CCPA 1977). It is the examiners position that the combination of Langdon and Gryskiewicz produces the same claimed structure, therefore the oxygen-carbon ratio would be inherent.


Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579.

The examiner can normally be reached on M-F (7:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on (703)308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw 
October 8, 2002


Aaron J. Lewis
Primary Examiner